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In re Application of  
Shuang Ji, et al  
Issue Date: April 22, 1997  
Application No. 08/533,706  
Filed: September 26, 1995  
Attorney Docket No. 2124-US

SPECIAL PROGRAMS OFFICE  
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ON PETITION

This is a decision on the petition filed March 12, 1998, which is being treated as a conditional petition under 37 CFR 1.137(b) to revive the above-identified application.<sup>1</sup>

The petition is **GRANTED**.

Note that in DH Technology v. Synergystex International, Inc., 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1966), the District Court for the Northern District of California held that the submission of the full issue fee under 37 CFR 1.28(c) must also meet the requirements of 37 CFR 317. The requirements for acceptance under 37 CFR 1.317 are similar to the provisions for revival under 37 CFR 1.137 and the reinstatement proceedings under 37 CFR 1.378. DH Technology is currently under appeal to the Court of Appeals for the Federal Circuit (CAFC).

Assuming, *arguendo*, that fee deficiencies payment under 37 CFR 1.28(c) must also meet the requirements for the respective provision of 37 CFR 1.137, which was amended effective December 1, 1997 to include the provisions of former §§ 1.139, 1.155, 1.316, and 1.317 (*cf.* DH Technology v. Synergstex International,


<sup>1</sup> The petition is styled as conditional in that the Patent and Trademark Office (PTO) does not currently regard the above-identified application as abandoned, and petitioners are not viewed as conceding that the above-identified application is abandoned.

Inc., 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1996)), the instant petition under 37 CFR 1.137(b) is appropriately filed. Specifically, the failure to submit full issue fee during the filing and prosecution of the above-identified application could have resulted in abandonment no earlier than January 23, 1997, the day after the fee was due to the Office action of October 22, 1996. Therefore, regardless of the ultimate disposition of DH Technology by the CAFC, the granting of the instant petition under 37 CFR 1.137(b) is adequate to restore or maintain pendency of the above-identified application.


Small Entity Status will no longer apply.

The above-identified application is being forwarded to Technology Center Group Art Unit 2785.

Inquiries with regard to this decision should be directed to Janice M. Ford at (703) 305-8736.



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